



[Billing Code: 4810–31–P]

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2012–0004; T.D. TTB–110; Re: Notice No. 129]

RIN: 1513–AB46

Establishment of the Indiana Uplands Viticultural Area and Modification of the Ohio River Valley Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final Rule; Treasury Decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the approximately 4,800-square mile “Indiana Uplands” viticultural area in south-central Indiana. TTB also modifies the boundary of the established 26,000-square mile Ohio River Valley viticultural area to eliminate a potential overlap with the Indiana Uplands viticultural area. The modification decreases the size of the Ohio River Valley viticultural area by approximately 1,530 square miles. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: Effective [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01 (Revised), dated January 21, 2003, to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the

establishment or modification of American viticultural areas and lists the approved American viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and a name and a delineated boundary as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of American viticultural areas. Such petitions must include the following:

- Evidence that the area within the proposed viticultural area boundary is nationally or locally known by the viticultural area name specified in the petition;

- An explanation of the basis for defining the boundary of the proposed viticultural area;
- A narrative description of the features of the proposed viticultural area that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make it distinctive and distinguish it from adjacent areas outside the proposed viticultural area boundary;
- A copy of the appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed viticultural area, with the boundary of the proposed viticultural area clearly drawn thereon; and
- A detailed narrative description of the proposed viticultural area boundary based on USGS map markings.

Indiana Uplands Petition

Jim Butler of Butler Winery in Bloomington, Indiana submitted a petition to establish the approximately 4,800-square mile Indiana Uplands viticultural area in south-central Indiana. The proposed Indiana Uplands viticultural area contains 19 vineyards with approximately 200 acres under cultivation, 2 planned vineyards of 15 to 20 acres each, and 17 wineries; the existing and planned vineyards are geographically distributed throughout the proposed viticultural area, according to a map submitted with the petition.

Spanning 110 miles north to south beginning at the line that separates Morgan and Monroe Counties, the proposed Indiana Uplands viticultural area extends south to the Ohio River at the Kentucky border. The proposed viticultural area extends approximately 63 miles east to west at its widest point,

from Clark County to Martin County. Nineteen Indiana counties are located partially or totally within the proposed viticultural area: Monroe, Brown, Morgan, Owens, Greene, Lawrence, Bartholomew, Orange, Washington, Floyd, Harrison, Perry, Crawford, Jackson, Martin, Daviess, Dubois, Scott, and Spencer.

Proposed Modification of the Ohio River Valley Viticultural Area Boundary

TTB notes that approximately 1,530 square miles in the southern portion of the Indiana Uplands viticultural area as originally proposed in the petition overlapped the approximately 26,000-square mile Ohio River Valley viticultural area (27 CFR 9.78). The Ohio River Valley viticultural area encompasses the broad valley surrounding the Ohio River in Indiana, Kentucky, Ohio, and part of West Virginia; see T.D. ATF-144, published in the Federal Register (48 FR 40377) on September 7, 1983. Seven Indiana counties are partially or totally within the area overlapping the Ohio River Valley viticultural area: Washington, Clark, Floyd, Harrison, Perry, Crawford, Scott, and Spencer Counties.

The Indiana Uplands petition presents evidence that the geology, soils, topography, and climate of the overlapping portion of the proposed viticultural area are largely consistent with the rest of the proposed viticultural area and are distinctive when compared to the larger Ohio River Valley viticultural area. TTB concluded that the features of the portion of the proposed Indiana Uplands viticultural area that overlaps the Ohio River Valley viticultural area are sufficiently distinct from those within the Ohio River Valley viticultural area as to warrant proposing a boundary adjustment to eliminate the two areas' potential overlap.

In communications with TTB, the Indiana Uplands petitioner agreed that the distinguishing features of the larger Ohio River Valley viticultural area and the overlapping portion of the proposed Indiana Uplands viticultural area differ significantly, and he concluded that modifying the boundary of the Ohio River Valley viticultural area to exclude the overlapping region would be warranted if the proposed Indiana Uplands viticultural area were to be established. At TTB's request, the petitioner obtained letters from the owners of the 11 wineries and vineyards that would be affected by the proposed modification of the Ohio River Valley viticultural area, all of which indicate agreement by the owners with the proposed modification. In the letters, the vineyard owners also indicate their willingness to no longer to use "Ohio River Valley" as an appellation of origin for wine produced from their grapes if the boundary is modified.

Notice of Proposed Rulemaking and Comments Received

On June 8, 2012, TTB published Notice No. 129 in the Federal Register (77 FR 33985) proposing to establish the Indiana Uplands viticultural area and to modify the boundary of the existing Ohio River Valley viticultural area to eliminate any potential overlap of the two areas, as discussed above. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed Indiana Uplands viticultural area. The distinguishing features of the proposed viticultural area include geology, topography, climate, and soil. The notice included a comparison of the distinguishing features within the proposed viticultural area to the immediately surrounding areas. Notice No. 129 also included an overview of the Ohio River

Valley viticultural area and a detailed discussion of the differences between the distinguishing features within the existing Ohio River Valley viticultural area and those of the proposed Indiana Uplands viticultural area. For a description of the evidence relating to the name, boundary, and distinguishing features of the proposed viticultural area, as well as overview of the Ohio River Valley viticultural area and the comparison of the distinguishing features of the two areas, see Notice No. 129.

In Notice No. 129, TTB solicited comments on the accuracy of the name, boundary, climatic, and other required information submitted in support of the establishment of the Indiana Uplands viticultural area. TTB also asked for comments on whether the geographical features of the proposed Indiana Uplands viticultural area are so distinguishable from the existing Ohio River Valley viticultural area that the boundary of the Ohio River Valley viticultural area should be modified to exclude the overlapping portion of the proposed viticultural area. In addition, TTB specifically asked for comments from industry members whose wine labels would potentially be affected by the proposed Ohio River Valley viticultural area boundary modification. The comment period closed on August 7, 2012.

During the comment period, TTB received 5 comments in response to Notice No. 129. All 5 comments are from growers and winery owners within the proposed viticultural area who support the proposed Indiana Uplands viticultural area and the proposed modification of the Ohio River Valley viticultural area boundary. TTB received no comments opposing either the establishment of the

Indiana Uplands viticultural area as proposed or the proposed modification of the Ohio River Valley viticultural area boundary.

TTB Determination Regarding the Proposed Indiana Uplands Viticultural Area and Proposed Modification of the Ohio River Valley Viticultural Area

After careful review of the petition and the comments received in response to Notice No. 129, TTB finds that the evidence provided by the petitioner supports the establishment of the approximately 4,800-square mile Indiana Uplands viticultural area. TTB also finds that the evidence submitted supports the modification of the boundary of the established Ohio River viticultural area so that the Ohio River Valley viticultural area and the new established Indiana Uplands viticultural area will not overlap. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and part 4 of the TTB regulations, TTB establishes the “Indiana Uplands” viticultural area in Monroe, Brown, Morgan, Owens, Greene, Lawrence, Bartholomew, Orange, Washington, Floyd, Harrison, Perry, Crawford, Jackson, Martin, Daviess, Dubois, Scott, and Spencer Counties, Indiana. TTB also modifies the Ohio River Valley boundary as described in Notice No. 129. These changes are effective 30 days from the publication date of this document.

Boundary Description

In this final rule, TTB made minor editorial changes to clarify some of the language in the written boundary description for the Indiana Uplands viticultural area, but the boundary’s location is not changed from that proposed in Notice No. 121. See the narrative boundary description of the Indiana Uplands viticultural

area and the modification of the Ohio River Valley viticultural area boundary in the regulatory texts published at the end of this final rule.

Maps

The Indiana Uplands petitioner provided the required maps, and TTB lists them below in the regulatory text.

Impact on Current Wine Labels

General

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. With the establishment of this viticultural area, its name, "Indiana Uplands," is recognized as a name of viticultural significance under 27 CFR 4.39(i)(3). The text of the final regulation clarifies this point. Once this final rule becomes effective, wine bottlers using "Indiana Uplands" in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use "Indiana Uplands" as an appellation of origin.

For a wine to be labeled with a viticultural area name or with a brand name that includes a viticultural area name or other term identified as being viticulturally significant in part 9 of the TTB regulations, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with the viticultural area name or other viticulturally significant term and that name or term appears in the brand name, then the label is not in compliance and the bottler must change the

brand name and obtain approval of a new label. Similarly, if the viticultural area name or other viticulturally significant term appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label.

Different rules apply if a wine has a brand name containing a viticultural area name or other term of viticultural significance that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Transition Period

Once this final rule to establish the Indiana Uplands viticultural area and to modify the boundary of the Ohio River Valley viticultural area becomes effective, a transition rule will apply to labels for wines produced from grapes grown in the approximately 1,530 square mile area that was formerly within the Ohio River Valley viticultural area. A label containing the words “Ohio River Valley” in the brand name or as an appellation of origin may be used on wine bottled within two years from the effective date of this final rule, provided that such label was approved prior to the effective date of this final rule and that the wine conforms to the standards for use of the label set forth in 27 CFR 4.25 or 4.39(i) in effect prior to the final rule. At the end of this two-year transition period, if a wine is no longer eligible for labeling with the Ohio River Valley viticultural area name (e.g., less than 85 percent of the wine is derived from grapes grown in the Ohio River Valley viticultural area, as modified in this final rule), then a label containing the words “Ohio River Valley” in the brand name or as an appellation of origin would not be permitted on the bottle. TTB believes that the two-year period should

provide affected label holders with adequate time to use up any existing labels. This transition period is described in the regulatory text for the Ohio River Valley viticultural area published at the end of this final rule. TTB notes that wine eligible for labeling with the Ohio River Valley viticultural area name under the new boundary of the Ohio River Valley viticultural area will not be affected by this two-year transition period.

Regulatory Flexibility Act

TTB certifies that this final regulation will not have a significant economic impact on a substantial number of small entities. The final regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This final rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this final rule.

List of Subjects in 27 CFR Part 9

Wine.

Regulatory Amendment

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

2. Amend section 9.78 by:

- a. Revising paragraph (c) introductory text and paragraphs (c)(5) and (6);
- b. Redesignating paragraphs (c)(7) through (21) as paragraphs (c)(11)

through (25); and

- c. Adding new paragraphs (c)(7) through (10) and (d).

The revisions and additions read as follows:

§ 9.78 Ohio River Valley.

* * * * *

(c) Boundary. The Ohio River Valley viticultural area is located in portions of Indiana, Ohio, West Virginia, and Kentucky. The boundary description in paragraphs (c)(1) through (24) of this section includes for each point, in parentheses, the name of the map sheet(s) on which the point can be found.

* * * * *

(5) The boundary proceeds in a straight line southeasterly to the confluence of the Anderson River and the Ohio River at Troy, Indiana (Evansville map).

(6) The boundary proceeds along the Indiana shoreline of the Ohio River (Evansville and Vincennes maps) generally easterly to the mouth of French Creek in Franklin Township, Floyd County, Indiana (Louisville map).

(7) The boundary proceeds in a straight line northerly to the peak of Lost Knob, then continues in a straight line north-northeasterly through the peak of Bald Knob to the junction of State Route 111 and a road locally known as W. St. Joe Road at St. Joseph in New Albany Township, Floyd County, Indiana (Louisville map).

(8) The boundary then proceeds on State Route 111 northerly to State Route 60 at Bennettsville in Clark County, Indiana, then on State Route 60 westerly to Carwood, and then in a straight line northerly to the point where the Clark–Scott county line crosses Interstate 65 at Underwood, Indiana (Louisville map).

(9) The boundary proceeds in a straight line northwesterly to Leota in Scott County, Indiana (Louisville map).

(10) The boundary proceeds in a straight line northeasterly to the town of New Marion in Ripley County, Indiana (Cincinnati map).

* * * * *

(d) Transition period. A label containing the words “Ohio River Valley” in the brand name or as an appellation of origin approved prior to March 7, 2013 may be used on wine bottled before March 9, 2015, if the wine conforms to the standards for use of the label set forth in § 4.25 or § 4.39(i) of this chapter in effect prior to March 7, 2013.

3. Subpart C is amended by adding § 9.228 to read as follows:

§ 9.228 Indiana Uplands.

(a) Name. The name of the viticultural area described in this section is “Indiana Uplands”. For purposes of part 4 of this chapter, “Indiana Uplands” is a term of viticultural significance.

(b) Approved maps. The six United States Geological Survey 1:100,000-scale metric topographic maps used to determine the boundary of the Indiana Uplands viticultural area are titled:

- (1) Tell City, Indiana–Kentucky, 1991;
- (2) Jasper, Indiana–Kentucky, 1994;
- (3) Bedford, Indiana, 1990;
- (4) Bloomington, Indiana, 1986; Photoinspected 1988;
- (5) Madison, Indiana–Kentucky, 1990; and
- (6) Louisville, Kentucky–Indiana, 1986.

(c) Boundary. The Indiana Uplands viticultural area is located in south-central Indiana. The boundary of the Indiana Uplands viticultural area is described as follows:

(1) The beginning point is on the Tell City map at the confluence of the Anderson River and the Ohio River near Troy in Perry County. From the beginning point, proceed north-northwesterly in a straight line, crossing to the Jasper map, to the intersection of State Roads 62 and 162, approximately 3.5 miles north of Santa Claus; then

(2) Proceed north on State Road 162 to its intersection with U.S. Route 231 in Jasper; then

(3) Proceed north on U.S. Route 231, crossing to the Bedford map and the Bloomington map, to the intersection of U.S. Route 231 with the 180-meter contour line in Bloomfield, approximately 0.3 mile south of State Road 54; then

(4) From the west side of U.S. Route 231, proceed northerly along the meandering 180-meter contour line, and, after crossing the Owen–Greene county boundary line, continue northeasterly along the contour line to its intersection with the Monroe–Owen county boundary line approximately 1 mile south of the confluence of Big Creek and the White River; then

(5) Proceed north, then northeasterly, and then south along the Monroe–Owen county boundary line to its intersection with the 200-meter contour line, approximately 0.3 mile south of the White River; then

(6) Proceed easterly along the meandering 200-meter contour line to its intersection with State Road 135, south of Morgantown and approximately 0.8 mile north of the Morgan–Brown county boundary line; then

(7) Proceed south on State Road 135 to the Morgan–Brown county boundary line; then

(8) Proceed east along the Brown–Morgan country boundary line and then Brown–Johnson county boundary line to its intersection with the Brown–Bartholomew county boundary line; then

(9) Proceed south-southeasterly in a straight line to the intersection of State Road 46 and a road locally known as N. County Club Road, approximately 1 mile north of Harrison Lake in western Bartholomew County; then

(10) Proceed south-southwesterly in a straight line to the intersection of State Road 58 and the Bartholomew–Jackson county boundary line; then

(11) Proceed east along the Bartholomew–Jackson county boundary line for approximately 0.4 mile to the county boundary line's first intersection with the meandering 200-meter contour line after crossing Buck Creek in northwestern Jackson County; then

(12) Proceed easterly then southwesterly along the meandering 200-meter contour line, crossing to the Bedford map, to the intersection of the contour line with U.S. Route 50; then

(13) Proceed east on U.S. Route 50 to its intersection with State Road 235; then

(14) Proceed south on State Road 235 to its intersection with the railroad tracks in Medora; then

(15) Proceed southwesterly along the railroad tracks to a point next to the intersection of two roads locally known as Sparksville Pike Road and Sparks Ferry Road (approximately 0.5 miles east Sparksville) and then proceed

southeasterly less than 250 feet on Sparks Ferry Road to that road's bridge over the East Fork of the White River; then

(16) Proceed easterly along the East Fork of the White River and then the Muscatatuck River to the State Road 135 bridge over the Muscatatuck River at Millport; then

(17) Proceed easterly in a straight line to the confluence of the Cammie Thomas Ditch and the Muscatatuck River, located on the northern boundary of Washington County; then

(18) Proceed southeasterly in a straight line, crossing to the Madison map, to the intersection of two roads locally known as E. Pull Tight Road and N. Pumpkin Center East Road at Pumpkin Center in Gibson Township, Washington County; then

(19) Proceed due south in a straight line for approximately 4.5 miles to the line's intersection with a road locally known as E. Old State Road 56; then

(20) Proceed easterly and then northeasterly on E. Old State Road 56 to its intersection with a road locally known in Scott County as S. Bloomington Trail, and then continue southeasterly on S. Bloomington Trail to its intersection with a road locally known as W. Leota Road at Leota; then

(21) Proceed southeasterly in a straight line to the intersection of Interstate 65 and the Scott-Clark counties boundary line at Underwood; then

(22) Proceed south-southwesterly in a straight line, crossing to the Louisville map, to the intersection of State Road 60 and a road locally known as Carwood Road at Carwood in Clark County; then

(23) Proceed southeasterly on State Road 60 to its intersection with State Road 111 at Bennettsville; then

(24) Proceed southerly on State Road 111 for approximately 1.8 miles to its intersection with a road locally known as W. St. Joe Road at St. Joseph; then

(25) Proceed south-southwesterly in a straight line to the 266-meter elevation point on Bald Knob, then continue south-southwesterly in a straight line to the 276-meter elevation point on Lost Knob; then

(26) Proceed southerly in a straight line to the confluence of French Creek and the Ohio River in eastern Franklin Township, Floyd County; then

(27) Proceed (downstream) along the Indiana shoreline of the Ohio River, crossing back and forth between the Tell City and Jasper maps, returning to the beginning point.

Signed: November 1, 2012.

John J. Manfreda,

Administrator.

Approved: November 23, 2012.

Timothy E. Skud,

Deputy Assistant Secretary
(Tax, Trade, and Tariff Policy).

[FR Doc. 2013-02454 Filed 02/04/2013 at 8:45 am; Publication Date: 02/05/2013]